BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into Ameritech Wisconsin's Unbundled Network Elements	Docket No. 6720-TI-161

POST-HEARING REPLY BRIEF OF AT&T COMMUNICATIONS OF WISCONSIN, L.P. AND TCG MILWAUKEE, d/b/a AT&T LOCAL SERVICES, MCI WORLDCOM, INC., McLEODUSA TELECOMMUNICATIONS SERVICES, INC., RHYTHMS LINKS, INC., TDS METROCOM, INC., TIME WARNER TELECOM OF WISCONSIN, L.P., AND KMC TELECOM, INC.

BRIEF ON ISSUES

- **Issue I(C)(2)(a) – Fill Factors**
- **Issue I(C)(2)(c) – What Prices Should Be Used For Loop Electronics**
- **Issue I(C)(2)(d) - Installation Factors**
- **Issue I(C)(2)(j) - Use Of Digital Loop Carrier**
- **Issue I(C)(3) - Costs Related To HPFL**
- **Issues I(C)(3)(e) and (f) - Line Splitters**
- **Issue I(C)(7) - Special Construction Charges**
- **Issue I(C)(7)(a) - Should CLECs Be Charged Special Construction Or Other Facilities Modification Charges For Constructing New Facilities**
- **Issue I(C)(8) - Conditioning Charges**
- **Issue I(C)(8)(b) - How Should Conditioning Charges Be Calculated,**
- **Issue I(F) - Switching And Termination Costs Allocation Between Setup And Usage Related To The Commission's Order In Docket No. 05-TI-283**

Pursuant to the briefing schedule in this proceeding, AT&T Communications of Wisconsin, L.P., and TCG Milwaukee, d/b/a AT&T Local Services (collectively "AT&T"), MCI WorldCom, Inc. ("WorldCom"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Rhythms

Links, Inc. ("Rhythms"), TDS Metrocom, Inc. ("TDS Metrocom"), Time Warner Telecom of Wisconsin, L.P. ("Time Warner Telecom"), and KMC Telecom, Inc. ("KMC") (collectively the "Competitive Local Exchange Carriers" or "CLECs") submit their post-hearing reply brief. AT&T and WorldCom do not join in the section of this brief on Issue I(C)(3) - Costs Related To HPFL. Further the parties join and support the Reply brief filed by Sprint in this matter.

INTRODUCTION

Given that the record and briefs in this matter are already voluminous, and further in light of the fact that the CLECs tried to be comprehensive in the coverage of issues in the Initial Brief, CLECs have not attempted in this reply brief to make a point-by-point reply to each statement and argument made by Ameritech in its Initial Brief. The fact that an issue or statement is not specifically replied to herein does not, of course, mean that the CLECs agree with Ameritech, and the Commission is respectfully directed to CLECs' Initial Brief for a full discussion of the CLECs' position on each issue.

The following issues do require some additional discussion, and therefore CLECs file the following in response to the arguments made by Ameritech in Ameritech's initial brief.

Issue C(a) – Fill Factors

The CLECs do not dispute that ¶ 682 of the First Report and Order contains an important directive concerning fill factors to be applied in UNE loop cost studies. The problem with the Ameritech approach is that it utterly ignores the

forward-looking command of the TELRIC rules, and focuses instead on what is essentially a single word in the entire paragraph. Ameritech creates a laser-like focus on the single word "actual" and ignores the remaining language of the paragraph in order to try and avoid the true forward-looking import of the language. The language quoted by Ameritech states in total:

> "Per unit costs shall be derived from total cost using reasonably accurate fill factors (estimates of the proportion of the facility that will be "filled" with network usage); that is a per-unit cost associated with particular element must be derived by dividing the total costs associated with the element by reasonable projection of the actual total usage of the element."

By its myopic focus on the term "actual," Ameritech attempts to obscure the true import of this section which includes that the estimate should be at the proportion of the facility that ***will be*** filled, and further that one should be comparing a ***reasonable projection*** of the actual total usage of the element. Ameritech simply argues that since it's monopoly derived fill factors (that is to say those fill factors that were maintained by Ameritech when it was a state required monopoly absolutely protected from any competition and 100 percent assured of cost recovery no matter what percentage of unused facility it placed) have been able to be maintained by Ameritech during the period since the enactment of the Telecommunications Act, this must be the fill factor that is "reasonably projected" into the future. Of course this type of backward-looking calculation based on historical, monopoly derived, embedded costs and facilities is precisely what the Act and the FCC rules were intended to eradicate.

On Page 44 of its Brief, Ameritech cites three factors which it states compel the conclusion that historical fill factors will not change over time and therefore are the most accurate projection of future usage. None of these factors are actually supported by the record in this matter, and there is nothing about them that compels the Commission to adopt the artificially low fill factors proposed by Ameritech.

First, Ameritech posits that its cost studies use the most forward-looking least cost currently available technology. Ameritech makes this strange assertion despite the fact that it admits using universal digital loop carrier (UDLC) in its cost studies for unbundled loops while it has switched to next generation digital loop carrier (NGDLC) for its deployment to its own customers, a form of integrated digital loop carrier (IDLC). (Exhibit 75 News Release, SBC, SBC Launches $6 Billion Initiative to Transform it into America's Largest Single Broadband Provider (October 18, 1999)). If UDLC were such a forward-looking modern technology one would suppose that Ameritech would not be replacing it in its network for its own customers with what is clearly the more modern, more efficient least cost technology of NGDLC and IDLC.

Ameritech next argues that the fact that actual total usage of the components has been stable over a number of years means it will continue to be stable in the future. This is belied by an important factor which Ameritech conveniently ignores. The current usage levels upon which Ameritech attempts to arrive are those usage levels that were instituted at least seven years ago and

therefore reflect the level of usage that would be maintained by Ameritech in a continued monopoly environment. (Tr. Vol. p. 1068, lines 8-25; p. 1069, lines 1-8). Since, as the latest FCC reports show, Ameritech continues to maintain in excess of 92 percent market share, these monopoly conditions still apply. It is not reasonable to suggest that at such time as Ameritech actually is finally forced to open its market to competition, these hugely inefficient fill factors will continue into the future. (Tr. Vol. p. 2089, lines 171-19 and p. 3042, line 11).

This leads us to Ameritech's factor number three wherein it states that the same economic and technological factors which drove fill factor levels in the past will continue to drive it in the future. As noted above, the existing fill factors are a result of a regulated monopoly that has been protected from competition. To say that these same economic factors will drive the same level of fill in the future is illogical. Further, to state that technology will not continue to improve belies the experience of the past several years when the increase in potential competition has leap frogged existing technologies at an alarming rate. If one were to accept Ameritech's argument that looking to the past for the stable technology and projecting that into the future, one would simply look at the incredible stability in the period of the 1950s and 1960s, and come to the conclusion that the only possible technology is the standard black desktop rotary dial telephone.

As a simple example of the changes which are expected from technology, one needs merely to look at the issue of unbundling of the high frequency portion of the loop (HFPL) which now allows a single loop to serve both as a high speed

internet connection and a voice loop. Where in the past two loops might have been required, and in fact spare loops were placed in the ground on the off chance that consumers might need a second line for internet access, as high speed DSL service continues to replace analog dialup service, the need to have second lines available in the ground for possible deployment will shrink. (Tr. Vol. p. 2148, lines 7-21 and p. 2149, lines 2-18).

Ameritech misconstrues the CLEC argument by stating that the CLECs are attacking the fill factors on the basis that the network portrayed by the models is not a forward-looking network. While the CLECs certainly have raised issues as to whether or not the network model is truly forward-looking, this is entirely beside the point with respect to the fill factors. Whether or not Ameritech's models do as they claim, i.e., re-deploy existing copper and fiber and loop electronics in the proportions not currently found in Ameritech's network (a point which CLECs do not concede), Ameritech nonetheless carries forward the same improper fill factors for each of those components. For example, the CLEC's argument with respect to fill factors is not so much that Ameritech in its model has not used the proper proportion of, for example, fiber versus copper, it is rather that when Ameritech uses copper or fiber in its model it applies an improperly low fill factor each time it is run through the model.

Ameritech is essentially relying on two arguments in support of its fill factors. One of them is that the fill factors proposed by Ameritech are those which Ameritech has experienced in the past. While it is true that CLECs do not directly

dispute that the fill factors proposed are those which Ameritech may have experienced in the past, this is completely irrelevant to the issue. Ameritech's second support for its fill factors is its totally unbelievable claim that nothing will change in the future and therefore the past fill factors also will not change in the future. This of course, as noted above, has been vigorously disputed by the CLECs.

Further, the CLECs have provided significant other support for the fill factors proposed by CLECs, most notably by citing to the Commission the fill factors used by Ameritech on in its filings with the FCC. Ameritech attempts to brush these off, but if these fill factors were not correct as filed with the FCC, then it would appear that Ameritech has at best misled, and at worst intentionally attempted to deceive the FCC in the past. Since such actions are not beyond Ameritech and its parent company,[1] one must examine the context of the previously submitted fill factors to determine if those fill factors submitted by

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[1] Letter from Edwardo Rodriguez, Jr., Director, Federal Regulatory, SBC Communications, Inc., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-217, at 1 (April 13, 2001)

See also: **Federal Communications Commission** *In the matter of SBC Communications Inc. Apparent Liability for Forfeiture* File No. EB-00-IH-0432 **ORDER ON REVIEW Adopted:** May 24, 2001, **Released:** May 29, 2001

> "In this order, we affirm the March 15, 2001 Order of Forfeiture issued by the Enforcement Bureau ("Bureau") finding SBC Communications, Inc. ("SBC") to have willfully and repeatedly violated certain of the conditions imposed when the Commission approved the merger application of Ameritech Corp. ("Ameritech") and SBC . . ." (footnote omitted)

Federal Communications Commission *In the Matter of SBC Communications Inc. Apparent Liability for Forfeiture* File No. EB-00-IH-0326a **ORDER OF FORFEITURE Adopted:** May 23, 2001, **Released:** May 24, 2001

> "In this Forfeiture Order, we find that SBC Communications, Inc. (SBC) willfully and repeatedly violated section 51.321(h) of the Commission's rules, requiring incumbent local exchange carriers (ILECs) promptly to post notice of premises that have run out of collocation space . . . ."

Ameritech were in fact reliable, and should be relied upon by this Commission. As noted in the testimony of Mr. Starkey (Tr. Vol. p. 3046, lines 6-11), Ameritech filed a cost study before the FCC, which was specifically related to loop costs in Wisconsin. This cost study proposed fill factors that are essentially identical to the fill factors advanced by the CLECs in this matter. (Exhibit 72). Ameritech advanced those fill factors as being completely accurate and proper projections of fill in its cost studies submitted to the FCC for the setting of retail rates. It is extremely telling to note that Ameritech does not even address this particular cost study in its initial brief knowing that it cannot reasonably and honestly dispute the fill factors filed in that cost study. Thus it appears that the fill factors filed in the FCC study are accurate and can be relied upon.

Accordingly, for these reasons, and those additionally noted in the CLECs' Initial Brief, the fill factors proposed by the CLECs should be ordered as inputs into the UNE cost models.

Issue 2(c) – What Prices Should Be Used For Loop Electronics

Ameritech's sole justification for attempting to use the outdated vendor contracts for loop electronics is simply that the new contract was not in effect at the time Ameritech initially ran its cost study. However, the additional information contained in here was particularly within Ameritech's possession, and could have been used to update the cost study at any time. As Ameritech acknowledges, the new contract went into effect in November 2000, several months prior to the time final testimony was filed in this matter. Ameritech has

had no problem updating other information in this record, including making several runs of the cost study at the specific request of Staff. Further, Ameritech updated the record in this matter several months after the hearing immediately prior to the filing of the initial briefs in this proceeding. (Ameritech's Amended Response to Second Data Requests, filed May 8, 2001). Thus it simply is not a logical excuse for Ameritech to state that it could not update its cost study based on the new vendor contracts. While Ameritech is correct that cost studies and rate setting proceedings require finality, it makes no sense to completely ignore information which is available well in advance of the actual decision date unless of course it is in Ameritech's interests to attempt to set rates as artificially high as possible. Contrary to Ameritech's assertions, the newer contracts as introduced by the CLECs in this matter should form the basis for the electronics inputs in the loop cost study, and the conservative discount estimates put forward by the CLECs should prevail.

Issue I(C)(2)(d) - Installation Factors

Ameritech, in a rare burst of honesty, in its brief blows the whistle on one of its own instances of double dipping to over recover its costs. On page 60 of its brief, Ameritech freely admits that it adds the costs of maintenance to try and come up with some justification for the "in plant" factors. This is of course a double dip since Ameritech also applies a maintenance factor to cover such costs. (Tr. Vol. p. 2853, lines 20-22 and p. 2854, lines 1-17). Of course this is really a "triple dip" due to the fact that, as shown in testimony of the CLEC witness

Starkey and in the CLECs initial brief, the contract for the loop electronics already includes 100 percent of the cost of installation. (Tr. Vol. p. 3065, lines 7-19 and p. 3067, lines 11-19). If Ameritech is attempting to say that the "in plant" charges are the costs of connecting other pieces of equipment to the loop electronics, these are already covered by the installation work undertaken by the electronics vendor. If Ameritech is referring to costs related to installing other equipment which works with the DLC equipment, the correct place to recover those installation costs is in the cost of those other pieces of equipment, not in the DLC equipment.

Issue I(C)(2)(j) - Use Of Digital Loop Carrier

It is clear that Ameritech has finally admitted that IDLC technology can be unbundled to provide UNE loops. (Tr. Vol. p. 3255, line 4). Thus the extensive discussion by Ameritech concerning the impossibility of unbundling IDLC should be simply discarded (see *e.g.,* Ameritech's statement on page 67 of the brief). Ameritech even admits on page 70 of its brief that it intends to continue to use IDLC for its own retail customers, and under its Project Pronto initiative intends to switch as many of its current customers to an IDLC technology as possible. (Tr. Vol. p. 3062, lines 12-20). Thus while Ameritech may continue to assert that it is proper to use UDLC for unbundled loops, this clearly runs afoul of the FCC's requirement concerning non-discriminatory access to ILEC facilities. As the FCC stated in the First Report and Order, "We believe that incumbent LECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them and, thus, have little incentive to provision unbundled

network elements in a manner that would provide efficient competition with a meaningful opportunity to compete." (11 FCC Rcd 15499 (1996) ¶ 307).

Further, the FCC stated, "We recognize that new entrants, including small entities, would be denied a meaningful opportunity to compete the quality of the access to unbundled elements provided by incumbent LECs, as well as the quality of the elements themselves, were lower than what the incumbent LECs provided to themselves." (11 FCC Rcd 15499 (1996) ¶ 312). This is precisely the requirement that Ameritech is attempting to avoid with its separate but unequal networks. Ameritech has set about a process to try to create two completely separate but unequal networks. The first network is a modern forward-looking NGDLC network for Ameritech's own customers; the second is a legacy, outdated, less efficient UDLC network for CLECs. Although CLECs cited several other instances where the networks are unequal and discriminatory, (*See* Generally CLEC Initial Brief at 11, 35) this fact in and of itself, and admitted to by Ameritech, is sufficient to upend Ameritech's contentions that the cost study should be based upon UDLC for CLECs.

Issue I(C)(3) - Costs Related To HPFL

In this section of its brief, Ameritech engages in a level of legal cognitive dissonance which is painful to behold. Ameritech abandons all pretense of basing its arguments on cost. Ameritech apparently finally realizes that the CLECs are correct that there simply is no incremental cost incurred by Ameritech in providing the high frequency proportional loop (HFPL). Instead, Ameritech attempts to rely

almost entirely on policy arguments that imply that in a competitive market a provider would never sell a network element such as HFPL at a zero price. Of course the immediate fallacy in Ameritech's entire argument is that it assumes the result. That is to say, it assumes a competitive market when clearly one does not yet exist, and it is in fact the intention of this entire proceeding to try and facilitate the creation of such a market for the first time. The simple fact of the matter is that the Ameritech arguments do not change the basic underlying fact: that the provision of the HFPL to a CLEC does not result in any incremental cost to Ameritech. While elsewhere in its brief Ameritech trumpets cost above all, here it attempts to completely ignore the issue of cost and argue instead broad policy statements regarding cable television lines and economic theory. Ameritech even attempts an unconstitutional takings argument. All of these arguments fail for the same simple reason. The law requires that Ameritech recover its cost. The CLEC proposal of a zero rate for the HFPL provides Ameritech with recovery of 100 percent of its proven incurred costs in providing the high frequency portion of the loop. (Tr. Vol. p. 2158, lines 4-20 and p. 2159, lines 1-2). This is what Ameritech is entitled to receive, nothing more. Nothing less. The part of the Eighth Circuit order in IUB III cited by Ameritech highlights this: "The new entrant competitor, in effect, piggybacks on the ILECs existing facilities and equipment. It is the cost to the ILEC of providing that ride on those facilities that's the statute permits the ILEC to recoup." (219 F2d F3 at 750-751). Here the cost is zero, and that is exactly what the statute permits Ameritech to recoup.

ISSUES I.C(3)(e) & (f) (Line Splitters):

Based Upon the AT&T/Ameritech Arbitration Award, the Commission Should Require Ameritech to Make Line Splitters Available on Any Requested Basis (Issue I.C(3)(e)1.)

Ameritech Wisconsin has ignored completely the important predicate assumptions for these issues relating to line splitters and has engaged instead in an extended discussion of why it believes various federal orders and the Texas 271 order do not require it to provide splitters to CLECs "under any circumstances." (*See* Ameritech Brief at 105-118). However, as reflected in the Issues List established for this case, the issue for Commission decision is premised upon an assumption that the AT&T/Ameritech arbitration award in Docket 05-MA-120,[2] as adopted in the stipulation in the OSS case (Docket 6720-TI-160), *requires* Ameritech Wisconsin to make line splitters available to CLECs. Ameritech Wisconsin conveniently disregards this fundamental overlay to the issues for briefing and engages in a lengthy – but ultimately nonresponsive – discourse on why an ILEC, "in its sole discretion," may *choose* to provide its own splitters, but is not *required* to do so.

Despite Ameritech Wisconsin's attempts to redirect the focus of the question for Commission decision, the fact remains that under the AT&T/Ameritech Award, Ameritech Wisconsin must make line splitters available to CLECs as UNEs. (*See* AT&T/Ameritech Award at 79-80). Ameritech

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[2] Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc.* (d/b/a Ameritech Wisconsin), Docket No. 05-MA-120, October 12, 2000 ("AT&T/Ameritech Award").

Wisconsin's failure to recognize the import and precedential value of this award does not negate its validity.

The issue then becomes whether Ameritech Wisconsin should make splitters available on a line-at-a-time, shelf-at-a-time, or some other basis. Ameritech Wisconsin claims that the Commission cannot require it to provide splitters on a shelf-at-a-time basis, an argument bootstrapped from its claims that it is not required to provide splitters at all:

> As a matter of law and logic, if Ameritech Wisconsin has no obligation to provide splitters to any CLEC under any circumstance, Ameritech Wisconsin certainly cannot be required to provide them on a shelf-at-a-time basis. Indeed, imposing a shelf-at-a-time requirement clearly would conflict with the notion that providing ILEC-owned splitters is optional.

(Ameritech Brief at 110) (citations omitted).

Again, Ameritech Wisconsin has ignored the context of the question before the Commission, which is whether – *assuming that the AT&T/Ameritech Award requires Ameritech Wisconsin to make line splitters available* -- Ameritech Wisconsin should be required to make them available on a line-at-a-time, shelf-at-a-time, or some other basis. Thus, the fact that federal law, or Texas law, may stop short of Wisconsin law on the issue is irrelevant. The predicate to the issue to be decided here is the existence of *Wisconsin* law requiring Ameritech Wisconsin to make line splitters available to CLECs.

Ameritech Wisconsin's position here is nothing more than a thinly-veiled effort at frustrating competitors. After all, its own witnesses have testified that it

has literally ***xxxxxxxxxxxxxxxxx*** **[CONFIDENTIAL]** of idle line splitters. Ameritech Wisconsin witness Mark Welch testified that:

> Currently there are a total of *** *** **[CONFIDENTIAL]** splitters in central offices with only *** *** **[CONFIDENTIAL]** working – approximately *** *** **[CONFIDENTIAL]**. There are ***xxxxxx*** **[CONFIDENTIAL]** equipped, *but not working*.

(Tr. Vol. 3, p. 484***) (emphasis added).

Given that Ameritech Wisconsin possesses all of these idle splitters, the only reason to withhold them from CLECs on a shelf-at-a-time basis is to frustrate competition in order to maintain its monopoly. Ameritech Wisconsin does raise some alleged "policy" objections to being required to provide splitters on a shelf-at-a-time basis. Specifically, it claims that providing splitters on a shelf-at-a-time basis is economically inefficient, and will ultimately lead to ILECs exercising their "option not to provide splitters at all." (Ameritech Brief at 110-11). However, this argument can once again be traced back to Ameritech Wisconsin's faulty stance that any splitter provisioning in which it engages is voluntary, rather than required by Wisconsin law. Again, the AT&T/Ameritech Award confirms that this position is incorrect and unsupportable. (*See* AT&T/Ameritech Award at 79-80).

Ameritech Wisconsin finally raises "technical and operational reasons" for providing splitters only on a line-at-a-time basis. As the CLECs discussed in their initial brief, there will be times that they prefer to obtain splitters on a line-at-a-time basis, but there will be others where it is more economically efficient to order

them on a shelf-at-a-time basis. (*See* CLEC Brief on Loop Related Issues at 1.C-75). Ameritech Wisconsin's apparent refusal to configure its system to accommodate both provisioning formats should not form the basis for rejecting the CLEC coalition's position that splitters should be provisioned on whatever basis is requested by a particular CLEC.

Ameritech Wisconsin's claims regarding the limitations of its inventory control system (*see* Ameritech Brief at 111-13) simply are not credible in a sophisticated world of telecommunications, where services are ordered and products delivered on a shelf-at-a-time basis. The Commission may recall that Ameritech made similar claims about its "inability" to provide shared and common transport – claims quickly abandoned when the SBC/Ameritech merger came into play. Healthy skepticism is appropriate in evaluating claims from Ameritech Wisconsin that it is "unable" to accommodate CLEC requests that would promote efficient competition. At a minimum, when CLECs order line splitters, the cost studies and prices should reflect shelf-at-a-time ordering.

Ameritech Wisconsin also asserts that frame exhaust will occur if it is required to provision splitters on a shelf-at-a-time basis. (*See* Ameritech Brief at 111; 113-15). The CLECs' response is three-fold. First, CLECs typically do not order more facilities than they need, because it is uneconomical to do so. Second, Ameritech Wisconsin's argument that shelf-at-a-time splitter provisioning would lead to frame exhaust is contrary to its business goals. Ameritech is in the telecommunications business – its ultimate goal is to sell its telecommunications

products and services. Ameritech Wisconsin's cries of frame exhaust are akin to a grocer complaining before Thanksgiving that he does not want to sell turkeys because he may deplete his inventory of turkeys – an untenable, and even nonsensical position. Finally, if Ameritech Wisconsin used the frame-mounted splitters advocated by the CLECs, it would mitigate the ostensible frame exhaust problem, as frame-mounted splitters are smaller and fall somewhere between line-at-a-time and shelf-at-a-time splitters.

Ameritech Wisconsin additionally claims that the "efficient use of capital for both Ameritech Wisconsin and CLECs" justifies its refusal to provide splitters on a shelf-at-a-time basis. (*See* Ameritech Brief at 111, 115-16). However, as Mr. Welch testified, Ameritech Wisconsin is sitting on a large inventory of unused splitters (Tr. Vol. 3, p. 484***), and has thus already incurred most of the necessary investments. What remains is for Ameritech Wisconsin to promote the use of these splitters and facilitate the CLECs' access to them, rather than attempting to frustrate the CLECs' attempts to access this technology on the most useful provisioning basis.

Finally, Ameritech complains that it "engineered its facilities and ordered equipment to provision splitters on a line-at-a-time basis," relying upon an ostensible "majority of CLECs" who addressed the issue during the line sharing trial. (Ameritech Brief at 112). The fact that an alleged "majority" of CLECs may have at one time requested line-at-a-time splitter provisioning in no way rebuts the fact that today, some CLECs prefer shelf-at-a-time capability. The fact that

Ameritech Wisconsin ignored this in designing and upgrading its systems does not excuse its obligation to provide splitters to CLECs on a meaningful basis. Taking Ameritech Wisconsin's argument to its logical conclusion, it could simply avoid all obligations to make its networks accessible to CLECs by intentionally designing them not to fulfill CLEC needs, and then claiming that it is too costly to fix them. Meaningful competition will only exist when an incumbent's network is truly available – both technically and cost-effectively -- to competitors.

The Commission should require Ameritech Wisconsin to provision splitters on whatever basis they are requested by the CLECs.

The Commission Should Require Ameritech to Provide Nondiscriminatory Access to its OSS Systems at Just and Reasonable TELRIC Rates to Support Its Line Splitter Availability (Issue I.C(3)(e)2. and 2.a)

Although the AT&T/Ameritech Award confirmed that Ameritech Wisconsin must provide nondiscriminatory access to its OSS systems at just and reasonable TELRIC rates to support its line-splitter availability (*see* AT&T/Ameritech Award at 73; 84-85), Ameritech claims, relying on two federal line-sharing orders and the Texas 271 order, that it "is not required to develop and make available OSS processes to support a CLEC's sharing of an unbundled loop with another carrier." (Ameritech Brief at 116). As in its discussion of its obligations to provide line splitters, Ameritech Wisconsin has simply ignored Wisconsin law that extends its obligations regarding splitters beyond those outlined in federal authorities. Once again, it bootstraps its argument against being required to provide nondiscriminatory access to its OSS systems at just and

reasonable TELRIC rates from its flawed assertion that it is not required to provide line splitters at all.

Wisconsin law is to the contrary, and the arbitration panel recognized the vital importance of providing proper OSS support to CLECs using Ameritech Wisconsin's splitters. (*See* AT&T/Ameritech Award at 85) ("Since the panel has ordered that Ameritech provide line splitting both as a UNE and as ancillary equipment to provide the functionalities inherent in unbundled loops, it must also provide the OSS systems that support such requests.").

Ameritech Wisconsin's refusal to provide OSS to support splitter provisioning is particularly unfounded given its complaints regarding the risk of stranded facilities and the inefficient use of space. The company cannot simultaneously raise these "concerns" and then object to a proposal that will encourage the efficient use of its existing surplus inventory of splitters.

Furthermore, an arrangement by which two CLECs could line-share is immensely attractive to CLECs and would do wonders to promote competition and choice of providers at affordable rates to Wisconsin consumers. Ameritech Wisconsin's arguments that it would have to modify its OSS to support splitter provisioning holds true in every instance in which it introduces a new technology or mode of provisioning service. This argument should not restrict free competition and consumer choice. The Commission should require Ameritech Wisconsin to provide nondiscriminatory access to its OSS systems at just and reasonable TELRIC rates.

The Commission Should Require Ameritech Wisconsin to Provide Line-Splitting Over UNE-P (Issue I.C(3)(f)1.)

Once again, Ameritech Wisconsin sidesteps the issue posed for Commission decision and instead repeats its mantra that it "has no legal obligation to provide splitters to any CLECs under any circumstances, including CLECs utilizing the UNE-P." (Ameritech Brief at 118). However, as with the matters discussed above, this issue, as framed by the Issues List for this docket, is predicated upon an assumption that the AT&T/Ameritech Award requires Ameritech to provide line-splitting over UNE-P. Thus, Ameritech Wisconsin's repeated invocation of various federal line sharing orders and the Texas 271 order is irrelevant to the Commission's consideration here, since Wisconsin law *expressly* requires what Ameritech Wisconsin claims federal law does not.[3]

A line-sharing arrangement in combination with UNE-P would be a very powerful means of promoting competition. The arbitration panel was unequivocal in its findings that "AT&T will be impaired if line splitting is not available, and if the splitter is not available as a UNE." (*See* AT&T/Ameritech Award at 80). Thus, the answer to the question posed here – whether, *assuming*

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[3] Ameritech Wisconsin also claims that under the Eighth Circuit's *IUB* decisions (which are currently under U.S. Supreme Court review), it cannot be required to provide new combinations of network elements. (*See* Ameritech Brief at 119). First, the transcript citation listed does not support this contention. Second, as Ameritech Wisconsin is well aware, the AT&T/Ameritech Award does require Ameritech Wisconsin to combine elements ordinarily combined in its network. (AT&T/Ameritech Award at 51). In fact, Ameritech Wisconsin filed lengthy objections to this finding in Docket 05-MA-120 on July 11, 2001. See Ameritech Wisconsin's Comments on Proposed Interconnection Agreement, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc.* (d/b/a Ameritech Wisconsin), Docket No. 05-MA-120 (July 11, 2001) at 20-27.

that the AT&T/Ameritech award requires Ameritech Wisconsin to provide line splitting over UNE-P, the Commission should require Ameritech Wisconsin to provide line-splitting over UNE-P, is a resounding yes.

Moreover, Ameritech Wisconsin is wrong to the extent it argues that federal law does not require it to provide line splitting over UNE-P. The FCC in its line sharing proceeding and in the proceeding on Verizon's 271 application for Massachusetts set forth the requirements for line splitting over UNE-P. *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket 98-147, FCC 01-26, Third Report and Order on Reconsideration, January 19, 2001; In the Matter of Application of Verizon New England Inc,. Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance) NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket 01-9, Memorandum Opinion and Order, April 16, 2001.*

The Commission Should Order Ameritech to Place Line Splitters on the Basis of Engineering Efficiency (Issue 1.c(3)(f)2.)

Although Ameritech Wisconsin claims that "neither the CLECs nor the Commission can dictate where splitters are located in Ameritech Wisconsin's central office, or how Ameritech Wisconsin voluntarily deploys splitters" (Ameritech Brief at 122-23), it again ignores the overarching assumption upon which the issue for Commission consideration is based – the existence and

applicability of the AT&T/Ameritech Award. Ameritech Wisconsin's position ignores the arbitration panel's finding that the key driver of splitter placement is the splitter's ultimate use. (*See* AT&T/Ameritech Award at 80-81). Thus, splitters need not be located in a CLEC's collocation space or a common area, and should instead be placed in line with efficiency. (*Id.*).[4]

The CLECs have advocated placing the splitters on the MDF. Ameritech Wisconsin has objected, claiming that this will lead to faster exhaust of the frame. However, under TELRIC principles, which Ameritech Wisconsin concedes govern here (*see* Ameritech Brief at 2), its goal should be to erect a least-cost network configuration. By focusing solely on the issue of MDF exhaust, Ameritech Wisconsin ignores the significant efficiencies associated with frame-mounted splitters: (1) because there are fewer jumper cables, there is a significant reduction in running jumper cables; (2) MDF mounted splitters do not take up the costly central office floor space that rack-mounted splitters do (on frames other than the MDF); and (3) from an overall cost perspective, MDF-mounted splitters are the least-cost technology.

Furthermore, Ameritech Wisconsin's assertion that MDF-mounted splitters cannot be efficiently repaired and maintained are unfounded – indeed, the testimony of both Ameritech Wisconsin (Mark Welch) and the CLECs (Sidney Morrison) in this proceeding demonstrated that US West has implemented precisely the MDF-based splitters advocated here. (*See* Tr. Vol. 3, p. 267; Tr. Vol.

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[4] Ameritech Wisconsin appears to agree, at least to some extent: "Ameritech Wisconsin should be

10, p. 3513). It is hard to believe that it would have done so if these splitters were as flawed as Ameritech Wisconsin would have the Commission believe. This is perhaps another instance of Ameritech Wisconsin stating that it "cannot" do what it actually can, but *does not want* to do.

Line splitters should be placed in line with efficiency, as urged in the CLECs' proposal for MDF-mounted splitters.

The Commission Should Require Ameritech to Price Line Splitters at TELRIC Rates (Issue I.C(3)(g))

In responding to the issue of how the cost of line splitters and placement should be determined, Ameritech refers simply to its discussion of pricing for the recurring and non-recurring costs of the HFPL UNE. While the CLECs similarly refer the Commission to their discussion of this issue in their reply brief (*see* Issue I.C(3)(c) above), they also emphasize that Dr. Ankum testified that Ameritech Wisconsin has vastly overstated splitter costs in its cost studies and adjustments are necessary to correct the flaws in its cost analysis. (*See* Tr. Vol. 6, pp. 2196-97). Splitter prices should be based on the cost of the most efficient configuration. Therefore, even if Ameritech chooses to use rack-mounted splitters, splitter pricing should reflect the costs of MDF-mounted splitters that require fewer jumper cables, thereby reducing costs. Ameritech Wisconsin objects to this proposal because it sets prices based upon a hypothetical network (*see* Ameritech

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permitted to provide Ameritech Wisconsin-owned splitters in the most efficient way possible, to alleviate the real risks of stranded investment." (Ameritech Brief at 115).

Brief at 126). However, Ameritech Wisconsin's own loop cost model is entirely based on a hypothetical network. Ameritech Wisconsin's true complaint is that the CLECs' proposal does not allow it to profit at the CLECs' expense by provisioning splitters in a less than efficient manner.

Applying the adjustments identified by Dr. Ankum in his confidential testimony and accompanying exhibit will result in more appropriate pricing for splitters – TELRIC pricing. (*See* Tr. Vol. 9, pp. 2582-90*** and Ex. 61***). Ameritech Wisconsin's witness, William Palmer, confirmed that TELRIC pricing is appropriate for UNEs (*see* Tr. Vol. 2, p. 676), and the AT&T/Ameritech Award determined unequivocally not only that line splitters are a UNE, but that TELRIC pricing is appropriate for UNEs. (*See* AT&T/Ameritech Award at 80; 72).

Issue I(C)(7) - Special Construction Charges

The same fallacy concerning IDLC versus UDLC loop provisioning is maintained throughout Ameritech's discussion of special construction charges. The part of the Eighth Circuit order in IUB III cited by Ameritech above highlights this. What Ameritech proposes here is not to give CLECs a "ride" on Ameritech's existing facilities, but intends to use one set of facilities for itself, and give the CLECs a "ride" on an entirely different set of facilities not to be used by Ameritech going forward. Therefore, what Ameritech is attempting to recover by at least one portion of its special construction charges is not the cost of making its facilities available to CLECs, but rather the cost of shifting CLECs off of

Ameritech's facilities (at least those it intends to use for its own customers going forward) and instead putting CLECs on facilities which Ameritech is attempting to abandon any way, in favor of its new technology. It is as though Ameritech is attempting to provide automobiles for its own customers, and at the same time charge CLECs for the costs of shifting those customers to a horse and buggy when the CLEC manages to obtain the customer by competition with Ameritech. In short, there would be no need to recover all the "special construction" charges related to shifting loops from IDLC to UDLC if Ameritech did what is required by the Act, and unbundled IDLC for CLECs.

Ameritech also implies that CLECs "complain that they cannot make a profit on end users served by IDLC if they have to bear the cost of serving such a customer." (Ameritech Initial Brief at 239). This statement, as with so many Ameritech assertions, is outrageously false in that Ameritech is doing everything in its power to make sure that no CLEC serves even a single customer over IDLC. What CLECs are saying is that they cannot make a profit if they have to use UDLC to serve customers that Ameritech serves over IDLC, and which Ameritech first switches to UDLC at great expense to the CLEC. When this happens, the costs to the CLEC are entirely different than the costs Ameritech incurs itself, based on the discriminatory treatment and discriminatory pricing which Ameritech attempts to inflict upon the CLECs. If Ameritech fulfilled its statutory obligation to provide CLECs with the same access to IDLC served customers as Ameritech provides to itself, there would be no discriminatory treatment whereby Ameritech

enjoys the use of a low cost IDLC based network and attempts to impose on CLECs the costs of not only a higher cost, less efficient UDLC network, but the costs of converting customers from the Ameritech IDLC network to the gulag of UDLC networks. Finally in a fit of hubris Ameritech argues that the CLECs should put up with this discriminatory treatment by Ameritech because it is one of the risks "any business faces in a competitive market." There simply is nothing competitive about a market which is dominated by a single party with over 92 percent market share, and which enjoys essentially a near 100 percent market share on "the last mile."

Issue I(C)(7)(a) - Should CLECs Be Charged Special Construction Or Other Facilities Modification Charges For Constructing New Facilities

Ameritech's arguments in this regard, although illogical, can be easily summed up: Number one, since CLECs request the construction they should pay for it; number two, the costs of construction are not already recovered in the monthly nonrecurring loop rates. With respect to argument number one, Ameritech states, "The carrier that requests construction and uses (and profits from) facilities constructed should pay the associated costs." The fallacy here is evident. Such a result might be logical if in fact the CLECs were allowed to own the facilities after they pay 100 percent of the cost of construction. This however is not the case as Ameritech, after having the facilities paid for by someone else, will continue to own them and will profit from them both now and in the future. They will profit now because, as Ameritech continually insists, TELRIC prices include recovery of costs plus a reasonable profit. (11 FCC Rcd 15499 (1996)

¶ 29). Number two, Ameritech will profit from them in the future because Ameritech, as the owner of the facilities, will have the right to collect revenue over that facility from either a CLEC or, if Ameritech is successful in winning the customer back, an end user customer. Once again, fundamental fairness would imply that if the CLEC pays the costs of constructing the facility, Ameritech should pay rent to the CLEC if Ameritech wins back the customer served over that facility. CLECs are not proposing that such rental structure should be ordered, and in any event such a process would be unworkable. It does, however, point out the fundamental unfairness in Ameritech's attempts to collect its construction charges up front.

With respect to Ameritech's second argument, when one cuts away all of the rhetoric and smoke screens, Ameritech cannot help but stare directly into the mouth of a glaring contradiction to its argument; *all of Ameritech's facilities were constructed at some time.* There certainly is no evidence in the record that Ameritech has lost money for the last 100 or so years, so one must assume that Ameritech recovered the costs of constructing all of its existing loops at some point in time. There is no reasoned basis for saying that some loops should recover construction charges and some should not, when all loops are constructed as some point.

Further, Ameritech itself admits that its loop costs recover the costs of putting the loops in place (*i.e.*, construction charges). This is made abundantly clear by Ameritech's discussion of the methodology of its unbundled loop cost

study. Ameritech notes that its model covers the costs of loops "as they would be re-deployed and re-configured in the forward looking network required by the FCC's TELRIC methodology." (Ameritech Initial Brief at 44). Clearly the "re-deployment" includes constructing the plant, *i.e.*, the labor and material to put the loops in place. Further, at page 48, it attempts to defend its fill factors as a way to save the cost "to dig up streets and flower beds...and at that time place loop plant...". While CLECs do not concede that Ameritech's argument necessarily results in the artificially low fill factors Ameritech proposes, this does make it clear that its loop cost model calculates within the cost of each loop cost of construction ("digging up, etc.") of that loop. Therefore, the only remaining distinction put forth by Ameritech is that in one case the construction occurs prior to the CLEC gaining the customer (and of course it could be as little as a day prior) and in the case where Ameritech attempts to assess construction charges, the placement of the loop facility would occur after Ameritech becomes aware that the CLEC has obtained the customer. That this is results-based reasoning of the worst kind becomes immediately apparent. As if this were not sufficiently dispositive, on page 84 of its initial brief, Ameritech admits, "In Ameritech Wisconsin's last general rate case in September 1990 its retail rates were set to recover the **full cost of providing** all of its regulated services..." (Emphasis added) Since, as the Commission knows well, Ameritech's rates were frozen when it voluntarily elected alternate regulation in 1994, and further since Ameritech has not come back to the Commission for a rate increase as allowed by Wisconsin Statutes

§196.196 and made the requisite showing of a change in its costs, one is led to the inescapable conclusion that Ameritech's tariffed rates, at least for its retail services, recover 100 percent of its costs, including the costs of constructing the loop. Ameritech has not shown in this proceeding any reason why this similar logic should not apply to its UNE rates. And of course this further belies Ameritech's argument that its attempt to impose construction charges is valid because it attempts to impose such charges on its own retail customers. As noted in the CLEC's initial brief, this retail tariff has been challenged, and should be overturned for many of the same reasons as set forth in this proceeding.

Finally, CLECs must point out a glaring error in Ameritech's attempt to argue its construction charges to its retail construction charges by analogy. Ameritech, perhaps because its counsel are from Illinois and thus unfamiliar with Wisconsin procedures, attempts to argue that its retail construction tariff is "approved" by the Wisconsin Commission. As this Commission is well aware, under Wisconsin law and procedure, the Ameritech tariff was never subject to any scrutiny, challenge or other "approval" by the Public Service Commission in the past. It is only now being subjected to such challenge in the proceeding in Docket No. 6720-TI-167. Thus it is entirely misleading for Ameritech to imply that somehow its retail construction charges tariff is "approved."

Issue I(C)(8) - Conditioning Charges

Ameritech, with its myopic focus on the portions of the Local Competition First Report and Order and the UNE Remand Order which Ameritech claims allow

cost recovery for conditioning, completely ignores the language which specifically directs State Commissions, when determining the "costs" of conditioning, to ensure that such costs are calculated according to TELRIC principles. (11 FCC Rcd 15499 (1996) ¶ 29). As explained by Mr. Starkey in his testimony (Tr. Vol. p. 3087, lines 9-25 and p. 3088, lines 1-17), if conditioning charges are priced according to proper TELRIC principles, there should be no cost for conditioning of loops priced according to a TELRIC cost study. Ameritech even admits on page 243 of its brief that its cost model calculates costs of loops on a forward looking basis, *i.e.*, loops that do not include load coils, bridge taps, and other disturbers which require conditioning. Since Ameritech calculates its loop costs based on a network which does not include load coils and bridge taps, etc., Ameritech then comes to the conclusion that it should be paid the prices for removing those items which, according to its cost models, do not exist. Contrary to Ameritech's assertions, absolutely the opposite result is compelled by the proper application of the TELRIC pricing rules. As Ameritech admits, its cost studies are based on the cost to build "the components of the network as they would be re-deployed and re-configured in the forward looking network required by FCC's TELRIC methodology." (Ameritech Initial Brief at 44). Thus Ameritech must be required to apply the TELRIC methodology consistently. For instance, by using the forward looking network methodology, Ameritech is allowed to include capital costs for equipment, even though in the case of any individual loop those capital costs may have been fully depreciated many years

ago. Thus Ameritech gains the advantage of charging for something as if it was new, even though it is not. Ameritech then attempts to stand this on its head by adding to the cost of the "new" facility additional costs for removing items such as load coils which would never have existed in the "new" facility. Ameritech cannot have it both ways. Since logically those loops which would contain load coils and other disturbers are also most likely to be the oldest loops, on any loop for which Ameritech wished to assess conditioning charges, it would also logically be required to provide that loop at a rate which reflects a fully depreciated capital investment in the loop. This, of course, Ameritech studies do not do, and since they do not, the conditioning charges would be inappropriate if added on top.

In order to try to escape from this box, Ameritech once again attempts to totally misconstrue and misstate the CLEC position. CLECs do not alternately contend the conditioning costs are not included in the loop prices and then that a separate charge for conditioning would reflect the double recovery but rather, what CLECs contend is that the loop prices include the costs of a loop free of disturbers, *i.e.*, a conditioned loop, and that therefore the costs of conditioning would in fact be an inappropriate recovery for the reasons stated above. In short, the CLEC position is entirely consistent with the FCC's rules, that is to say the complete statement of the FCC rules and not the small slice of it which Ameritech feels favors Ameritech's position. The CLECs' position allows Ameritech to recover conditioning costs, but only if and to the extent such cost recovery is consistent with TELRIC principles. Ameritech has utterly failed to demonstrate, and CLECs

submit Ameritech would not be able to demonstrate, how under its cost studies recovery of conditioning charges would be consistent with TELRIC principles.

In any event, Ameritech's argument that somehow conditioning costs are outside of TELRIC because the FCC established the ability to recover conditioning costs in the same order that established TELRIC and reaffirmed it in the UNE Remand Order, must be read in harmony with the FCC's explicit direction that the conditioning costs it was discussing should be recovered only in accordance with the TELRIC principles.

Having now run to the other corner of its box of illogic, Ameritech attempts to extricate itself by hauling out its claim that the Eighth Circuit in IUB III declared TELRIC to be illegal. The CLECs fully discussed this issue in Part A of their initial brief and demonstrated the fallacy of that position, and in any event, Ameritech states conclusively at the beginning of its initial brief that its cost studies comply with TELRIC. Ameritech Initial Brief pp.1-5. Ameritech even admits that if TELRIC is improper and illegal then all of its cost studies must be thrown out summarily by this Commission. Were that the case, an entirely new UNE cost proceeding would need to be instituted. Of course absent the proper UNE cost study there would be no compliance with the competitive checklist under Section 271 and thus Ameritech's entry into long distance must be delayed until the new UNE cost study can be conducted. Fortunately, the Commission does not need to throw out the entire docket and start over, because, as explained

in the CLEC initial Brief, and as admitted by Ameritech, TELRIC is required by currently effective law.

Issue I(C)(8)(b) - How Should Conditioning Charges Be Calculated

Ameritech attempts to justify its unreasonable loop conditioning rates based on three factors. First it explains that the Staff of the Missouri Commission somehow blessed the times and intervals put forth by Ameritech herein. In support for that we have a single paragraph from a contested arbitration case in Missouri involving Ameritech's affiliate company, Southwestern Bell. The sole support is that "staff's observations have shown splicing times greater than those proposed by Southwestern Bell's SMES." It does not say anything about any of the dozens of other activities involved, nor does it indicate whether Staff may have also seen splicing times less than those proposed by Southwestern Bell. It does not identify any of the SMES (subject matter experts) nor give any of their qualifications. In any event, this Commission would be well advised to question the reliability and veracity of any statements related to Southwestern Bell's activities, especially in a state such as Missouri, Kansas, and Oklahoma where Southwestern Bell has now admitted to filing false statements with those Commissions in its attempts to obtain 271 approval. (*See* letter from Edwardo Rodriguez, Jr., Director, Federal Regulatory, SBC Communications to Magalie Salas, Secretary, FCC (April 13, 2001)).

The Ameritech statement that the times which the CLECs propose inputs to the conditioning portion of the cost studies is without real observation or

experience is an out and out fabrication. CLEC witness Sidney Morrison provided significant testimony relating to his vast years of experience in telephone field operations, and not just his personal observations of the activities in question, but also the fact that he had performed the operations in question himself. (Tr. Vol. p. 3502, lines 10-22; p. 3503, lines 1-21; p. 3504, lines 1-12; p. 3507, lines 23-24; and p. 3508, lines 1-23). By contrast, Ameritech did not produce a single one of SBC's so-called "SMES" at the hearing to be subjected to cross-examination as Mr. Morrison was. The reliability and credibility of these SMES is totally untested before this Commission, and thus they, and their asserted task times, should be given little, if any, weight.

Secondly, with respect to Ameritech's attempt to recover all conditioning costs upfront, as opposed to over time in the monthly recurring charges, this simply goes against basic good economic principles. As shown by the testimony of Mr. Starkey (Tr. Vol. p. 3104-05, lines 1-23 and 1-4. *See* also Tr. p. 4171, lines 14-22 and p. 4176, lines 1-9), when an ILEC conditions a loop it has essentially obtained a new form of capital asset, *i.e.*, a physical loop which is capable of transmitting DSL signals as opposed to a physical loop which is not capable of transmitting DSL. The proper way to recover the costs of such a capital asset is over time, not upfront in a single lump sum payment. (Tr. Vol. p. 3078, lines 2-29). Ameritech attempts to note the fact that the CLECs may not keep the conditioned loops as somehow supporting their idea that all costs should be paid upfront. Once again, the facts cited by Ameritech should lead the Commission to

exactly the opposite conclusion: since this demonstrates that Ameritech retains all the aspects of ownership over the loop and thus will gain all benefits from it in the future if the CLEC loses the customer and turns the loop back to Ameritech. In such cases it is much more appropriate that the costs be recovered over time.

Again, a simple example will illustrate. If a CLEC requests conditioning on a loop, and Ameritech is allowed to charge 100 percent of the costs of conditioning upfront, CLEC would be required to pay thousands of dollars for the conditioning. (*See* generally Tr. Vol. p. 4172, lines 14-22; p. 4173, lines 1-22; and p. 4174, lines 1-3). Suppose that Ameritech is able to "win back" the customer after only one year, and that the customer then proceeds to obtain not just a local POTS service from Ameritech but also obtains DSL service from Ameritech for the next ten years. Ameritech will obtain the benefits of the conditioned loop over that ten year period even though it recovered 100 percent of the costs of conditioning from the CLEC prior to the start of year one. Thus whoever actually gains the benefit of possession and use of the conditioned loop should be the party that pays the costs, not the party who has the loop fortuitously on the day of conditioning. The best way to ensure this is to have the costs of conditioning, if recovered at all, recovered over time in the monthly rate.

Finally, Ameritech objects to the CLEC proposal that if, and to the extent, conditioning charges are recovered at all, the conditioning charges should be calculated on an efficient basis (although Ameritech has not directly attacked the CLECs' proposal that loops be conditioned more than one at a time to gain

efficiencies based on economies of scale) and instead argues that it is improper to spread conditioning costs over all loops provisioned. Ameritech's position is unsupportable for two reasons. First, as it states many times in its brief, its cost studies are based on a DLC configuration so that no loops are supposed to have load coils and other disturbers. Thus, all loops will be presumed to be capable of DSL transmission. Thus to the extent certain loops do require additional conditioning work in order to in fact be capable of DSL transmission, it is entirely fair to spread the costs of making those loops DSL-capable over all loops since all loops are presumed to be DSL-capable. Secondly as Ameritech also recognizes, not all loops are absolutely identical, yet the Ameritech cost study does treat many loops as the same by providing for average costs. (Ameritech Initial Brief at 37-41). Thus, despite the fact that the Ameritech cost studies "smooth over" many other differences between loops in order to create average costs, it somehow feels that conditioning charges should be treated differently. It does not, however, provide any substantial support for this proposition. In fact, since Ameritech's cost study assumes all loops are DSL-capable, the costs of rendering certain loops physically capable of DSL transmission should be spread over all loops and not charged separately to some loops but not others.